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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )

BellSouth Petition for Forbearance )  
for Nonlocal Directory Assistance )  
Service )

CC Docket No:

99-311

**BELLSOUTH PETITION FOR FORBEARANCE**

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## TABLE OF CONTENTS

	<u>PAGE</u>
<u>INTRODUCTION AND SUMMARY</u> .....	1
I. <i>THE U S WEST FORBEARANCE ORDER</i> .....	2
II. BELLSOUTH'S REQUEST FOR FORBEARANCE. ....	4
A. BellSouth's Nonlocal Directory Assistance Service is a Permitted Incidental InterLATA Service Under Section 271(g)(4) of the Act. ....	4
B. Forbearance is Warranted Under the Standards Set By Section 10. ....	6
1. The Full Requirements of Section 272 are not Necessary to Ensure that BellSouth's Nonlocal Directory Assistance Service Charges, Practices, Classifications or Regulations are Just and Reasonable. ....	7
2. Enforcement of Section 272 Is Not Necessary For the Protection of Consumers. ...	10
3. Forbearance is in the Public Interest. ....	11
<u>CONCLUSION</u> .....	12

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# BELLSOUTH PETITION FOR FORBEARANCE

## INTRODUCTION AND SUMMARY

BellSouth Corporation, on behalf of BellSouth Telecommunications, Inc. ("BellSouth"), hereby petitions the Commission pursuant to Section 10 of the Communications Act<sup>1</sup> to forbear from applying the requirements of Section 272<sup>2</sup> of the Act, so as to allow BellSouth to provide nonlocal directory assistance service on an integrated basis with its local directory assistance services. This Petition seeks forbearance from the requirements of Section 272 consistent with the relief recently granted to U S West for its provision of nonlocal directory assistance.<sup>3</sup>

BellSouth is willing to meet the same conditions imposed on U S West in the *US West Forbearance Order*, including making available to unaffiliated competing providers of directory assistance services the same in region listing information that BellSouth uses to provide its

<sup>1</sup> 47 U.S.C. § 160.

<sup>2</sup> 47 U.S.C. § 272.

<sup>3</sup> *Petition of US West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance; Petition of US West Communications, Inc. for Forbearance; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, CC Docket

nonlocal directory assistance services, and to do so upon the same rates, terms, and conditions that BellSouth imputes to, or imposes upon, its own nonlocal directory assistance operations.

I. The *U S West Forbearance Order*.

In 1997, U S West petitioned the Commission for a declaratory ruling that U S West's national directory assistance service was not an interLATA service under the Communications Act, or that if it was an interLATA service, that it was permitted as a "previously authorized activity" pursuant to Section 271(f) of the Act.<sup>4</sup> In a subsequent filing, U S West asked that should the Commission conclude that national directory assistance service is an interLATA service and not a previously authorized activity, the Commission should conclude that the service is a permissible incidental interLATA service under Section 271(g)(4)<sup>5</sup> of the Act. Further, if the Commission were to so decide, U S West asked the Commission to forbear from the separate affiliate requirements of Section 272, which otherwise apply to incidental interLATA services permitted by Section 271(g)(4).

In the *U S West Forbearance Order*, the Commission concluded that U S West's centralized provision of national directory assistance service is an interLATA service.<sup>6</sup> Specifically, the Commission found that US West's use of official services trunks or leased lines that cross LATA boundaries to transport directory assistance calls from a traffic operator position system (TOPS) switch to centralized operator positions or to retrieve directory listing information from centralized databases caused U S West's service to fall squarely within the

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Nos. 97-172, 92-105, *Memorandum Opinion and Order*, FCC 99-133 (released Sept. 27, 1999) ("*U S West Forbearance Order*").

<sup>4</sup> 47 U.S.C. § 271(f).

<sup>5</sup> 47 U.S.C. § 271(g)(4).

<sup>6</sup> *U S West Forbearance Order* at ¶ 18.

definition of interLATA service.<sup>7</sup> The Commission also concluded that nonlocal directory assistance was not a permitted "previously authorized activity."<sup>8</sup>

Turning to Section 271(g)(4), the Commission observed that U S West's national directory assistance service had a bifurcated structure.<sup>9</sup> Callers requesting listing information for subscribers within U S West's region were routed to operators who retrieved listing information from a database housed on facilities owned by U S West. In contrast, callers requesting listing information for subscribers outside of U S West's region were routed to operators who retrieved the requested information from storage facilities owned by a third party. Construing narrowly the Section 271(g)(4) authority for a Bell operating company to provide "a service that permits a customer that is located in one LATA to retrieve stored information from . . . information storage facilities *of such company* that are located in another LATA," the Commission concluded that only the former service architecture falls within the scope of permitted activity.<sup>10</sup>

Having thus determined that U S West's provision of regionwide directory listings from a database owned by U S West was permitted by Section 271(g)(4), the Commission next considered U S West's request for forbearance from the separate affiliate requirements of Section 272 for such activity pursuant to the Commission's Section 10 forbearance authority. Applying the forbearance criteria of Section 10, the Commission allowed U S West to provide the regionwide component of its offering without a separate affiliate, but conditioned such relief upon a requirement that U S West provide to unaffiliated entities all of the in-region directory

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<sup>7</sup> *Id.*

<sup>8</sup> *U S West Forbearance Order* at ¶ 21.

<sup>9</sup> *U S West Forbearance Order* at ¶ 23.

<sup>10</sup> *Id.*

listing information it uses to provide regionwide directory assistance at the same rates, terms, and conditions it imputes to itself.<sup>11</sup> Additionally, the Commission noted that if U S West were offering the out-of-region portion of its service in compliance with Section 271(g)(4), that activity would also fall within the scope of the relief granted in the *U S West Forbearance Order*.<sup>12</sup>

II. BellSouth's Request for Forbearance.

By this Petition, BellSouth requests forbearance from Section 272 to the same extent of, and subject to the same conditions attached to, the forbearance relief granted U S West in the *U S West Forbearance Order*. BellSouth will offer nonlocal directory listing information through a service architecture that appears in all material respects like that of U S West's present regionwide nonlocal directory assistance service. Further, BellSouth competes in the same competitive market as U S West and provides consumers the same service benefits. Accordingly, forbearance is in the public interest and should be granted.

A. BellSouth's Nonlocal Directory Assistance Service is a Permitted Incidental InterLATA Service Under Section 271(g)(4) of the Act.

In the *U S West Forbearance Order*, the Commission concluded that the regionwide component of U S West's national directory assistance service is a permitted incidental interLATA service under Section 271(g)(4) and is thus an appropriate arrangement for consideration of forbearance from the requirements of Section 272. Further, the Commission observed that if U S West's out-of-region component were brought into compliance with Section 271(g)(4), such as by providing such information from storage facilities owned by U S West, it,

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<sup>11</sup> *U S West Forbearance Order* at ¶ 30.

<sup>12</sup> *U S West Forbearance Order* at ¶ 28.

too, would be covered by the forbearance relief granted by the Commission. Accordingly, BellSouth requests the same relief from Section 272 for both its in-region and out-of-region directory listing information provided in compliance with Section 271(g)(4).

As BellSouth has previously informed the Commission,<sup>13</sup> BellSouth's service arrangement appears in all material respects to be the same as that of U S West's. Typically, a customer dialing 411 is routed to a TOPS switch within the caller's LATA.<sup>14</sup> The caller is greeted with an automated directory assistance voice prompt asking for the city and state of the desired listing information. If the caller requests a number for a listing within the callers own NPA, the caller is connected to an operator with access to the appropriate local listing database. On any such call, the caller, the operator, and the database may be in separate LATAs due to BellSouth's centralization of databases and operator positions. These calls, the Commission has determined, are permitted "previously authorized activities" under Section 271(f).<sup>15</sup>

On all other calls, the network configuration will be the same. Calls arriving at the TOPS switch will be routed over interLATA facilities to appropriate operator positions, and listing data will be retrieved from distant listing databases over interLATA links. To eliminate the deficiency of U S West's service arrangement, BellSouth will also ensure that all of the out-of-

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<sup>13</sup> BellSouth Comments, *Petition of U S West Communications, Inc., for a Declaratory Ruling Regarding the Provision of National Directory Assistance*, CC Docket No. 97-172 (filed Sept. 2, 1997).

<sup>14</sup> Of course, 411 dialing is not an inherent component of a nonlocal directory assistance offering. For example, IXCs currently offer nonlocal directory assistance services using 1 + NPA + 555-1212 to reach LECs' directory assistance platforms. Similarly, IXCs and others have designated alternative dialing arrangements to reach their own platforms or platforms provided by third parties. Regardless of whether a call reaches a BellSouth TOPS switch on a 411 call or is delivered to the TOPS switch by another carrier, however, BellSouth would utilize the same inter LATA links, operator positions, and storage facilities to provide the caller with the requested nonlocal listing information.

<sup>15</sup> *U S West Forbearance Order* at ¶ 5.

region listing information (as well as all the in-region listing information) BellSouth uses to provide nonlocal directory assistance is stored in and retrieved from storage facilities owned by BellSouth. Thus, BellSouth's nonlocal directory service will be made to conform in its entirety with Section 271(g)(4). Accordingly, BellSouth's nonlocal directory assistance service is appropriately subject to consideration of Section 10 forbearance from the requirement of Section 272.

B. Forbearance is Warranted Under the Standards Set By Section 10.

Absent forbearance by the Commission, incidental interLATA services permitted under Section 271(g)(4) are subject to the separate affiliate requirements of Section 272. In the instant case, however, forbearance is warranted in accordance with the standards set by Section 10.

Under Section 10, the Commission must grant forbearance under the following three conditions:

- Enforcement of such regulation or provisions is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in conjunction with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- Enforcement of such regulation or provision is not necessary for the protection of consumers; and
- Forbearance from applying such provision or regulation is consistent with the public interest.

BellSouth's nonlocal directory assistance service satisfies all three criteria.



1. The Full Requirements of Section 272 are not Necessary to Ensure that BellSouth's Nonlocal Directory Assistance Service Charges, Practices, Classifications or Regulations are Just and Reasonable.

As the Commission concluded in the *U S West Forbearance Order*, competition is the most effective means of ensuring that the charges, practices, classifications, and regulations of a nonlocal directory assistance are just and reasonable and not unjustly or unreasonably discriminatory.<sup>16</sup> The Commission found, however, that retention of the nondiscrimination requirements of Section 272(c)(1) with respect to the availability of U S West's in region directory listing information was necessary to ensure that such competition in the nonlocal directory assistance market continues.<sup>17</sup> BellSouth participates in the same market for nonlocal directory assistance services in which U S West participates. Accordingly, there is no reason to impose or retain any greater limitations on BellSouth's participation in that market.

Like U S West, BellSouth is a new entrant in the market for nonlocal directory assistance service. As a new entrant, BellSouth faces competition from AT&T and MCI, as well as from internet service providers, providers of payphone and cellular telephone services, and independent directory assistance service providers, such as Metro One and INFONXX. Like competing providers of nonlocal directory assistance, BellSouth must obtain the telephone numbers of subscribers outside its region from non-affiliated entities that compile national listings or from other LECs. On the basis of these market conditions, the Commission declined to impose a requirement that U S West make such out of region listing information available to

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<sup>16</sup> *U S West Forbearance Order* at ¶ 31.

<sup>17</sup> *U S West Forbearance Order* at ¶ 36.

its competitors as a condition of forbearance relief.<sup>18</sup> For the same reasons, no such conditions should be imposed on BellSouth.

In contrast, the Commission was concerned that US West's access to and use of directory listing information of its own in-region subscribers gave U S West an unfair advantage over its competitors in the nonlocal directory assistance market. Similarly, the Commission was concerned that U S West had an unfair opportunity to gain access to listing information for subscribers of independent carriers and CLECs within U S West's territory. To mitigate those concerns, the Commission required U S West to make available to nonaffiliated directory assistance providers all of US West's own in-region listing information that U S West uses in its nonlocal directory assistance service, as well as listing information US West obtains from independents and CLECs within US West's region. BellSouth agrees that if the Commission grants forbearance with respect to its nonlocal directory assistance service, it will abide by this condition as well.<sup>19</sup>

Further, the Commission required the listing information subject to the foregoing condition to be provided to nonaffiliates at the same rates, terms, and conditions that U S West

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<sup>18</sup> *U S West Forbearance Order* at ¶ 33.

<sup>19</sup> With respect to the information of other carriers, BellSouth understands this condition to attach only to in-region listing information of independents and CLECs that BellSouth actually obtains from the independent or CLEC. Because of similar Commission disclosure requirements in other contexts, BellSouth's experience has been that some independents and CLECs have chosen not to provide information to BellSouth for use in its directory assistance services. In some of those instances, however, BellSouth has been able to obtain the relevant listing information in the external marketplace from the same non-affiliated third party source from which BellSouth obtains out-of-region customer listing information. This information is therefore not in BellSouth's possession because of any purported market "dominance" and is instead equally available in the marketplace to BellSouth's competitors. Accordingly, BellSouth does not understand the nondiscrimination obligation to attach to listing information used in BellSouth's nonlocal directory assistance service that was obtained in this manner.

imputes to itself for such information.<sup>20</sup> BellSouth also agrees to meet this condition if forbearance is granted. Finally, BellSouth will treat its provision of nonlocal directory assistance as a nonregulated activity for accounting purposes in accordance with Part 64 of the Commission's Rules and will make appropriate changes to its cost allocation manual.<sup>21</sup> BellSouth will ensure that its independent auditor examines the treatment and accuracy of the imputed charges during the auditor's annual review of BellSouth's cost allocation manual, just as the Commission required of U S West.<sup>22</sup>

The Commission should not prohibit BellSouth from using the 411 or 1-411 dialing codes in conjunction with its nonlocal directory assistance service as a condition of forbearance. As the Commission found in the *US West Forbearance Order*, such use does not constitute unjust or unreasonable discrimination within the meaning of Section 10(a)(1).<sup>23</sup> The Commission declined to impose such a condition on U S West, and there would be no reason to impose such a condition on BellSouth.

Like U S West, BellSouth does not have "exclusive" use of the 411 dialing code. Any competitive LEC that wins the local customer will also be able to use this same telephone number for the provision of both local and nonlocal directory assistance service. Further, as the Commission has already observed, use of 411 for nonlocal directory assistance by BOCs has not deterred other carriers, including AT&T and MCI, from offering competing services using alternative access codes. Finally, prohibiting BellSouth from using the 411 dialing code for

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<sup>20</sup> *U S West Forbearance Order* at ¶ 37.

<sup>21</sup> *U S West Forbearance Order* at n.95.

<sup>22</sup> *U S West Forbearance Order* at n.96.

<sup>23</sup> *U S West Forbearance Order* at ¶ 43.

nonlocal directory assistance service until BellSouth obtains Section 271 authority would not only be unduly disruptive to BellSouth's provision of directory assistance service, but would be likely to cause significant customer confusion. For these reasons, which are the same reasons the Commission cited for not prohibiting U S West's use of 411,<sup>24</sup> the Commission should not deny BellSouth the right to continue using 411 in its nonlocal directory assistance service.

2. Enforcement of Section 272 Is Not Necessary For the Protection of Consumers.

The fundamental objective of the 1996 Telecommunications Act was to bring consumers of telecommunications services in all markets the full benefits of competition. As the Commission noted in the *U S West Forbearance Order*, imposition of the foregoing nondiscrimination requirements with respect to availability of in-region telephone numbers should promote the development of a fully competitive market for nonlocal directory assistance services by ensuring that no one competitor will have an undue advantage in the nonlocal directory services market. Such availability also should stimulate entry of new providers of nonlocal directory assistance. The introduction of additional competitors in the nonlocal directory services market will, in turn, encourage the providers of these services to compete on the basis of price and quality, which will ultimately benefit consumers. Consistent with the Commission's previous findings in this respect,<sup>25</sup> enforcement of Section 272 for BellSouth's nonlocal directory assistance service is not necessary to protect consumers.

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<sup>24</sup> *U S West Forbearance Order* at ¶ 43-44.

<sup>25</sup> *U S West Forbearance Order* at ¶ 46-47.

### 3. Forbearance is in the Public Interest.

In evaluating whether forbearance is in the public interest, the Commission considers several factors, including benefits to consumers and whether forbearance will promote competitive market conditions. Based on the same factors the Commission found relevant in the *US West Forbearance Order*,<sup>26</sup> the Commission must conclude that forbearance of Section 272 for BellSouth's nonlocal directory assistance service is in the public interest.

Requiring BellSouth to provide its nonlocal directory assistance services through a separate affiliate while it continues to provide local directory assistance on an integrated basis would raise BellSouth's costs with no attendant consumer benefits. Presently, BellSouth charges end user customers \$0.85 for nonlocal listings. These rates impose a competitive force on rates of other providers of similar offerings. If BellSouth were to have to recover the higher costs of operating its nonlocal directory assistance through a separate affiliate, it could be forced to charge higher rates -- if it could continue to offer the service at all. In either case, consumers would lose the direct benefits of BellSouth's low price and the indirect benefit of the pressure such prices put on others' services. Consumers could also lose the convenience of dialing the familiar 411 code to obtain in one call the listing information for subscribers in disparate geographic regions, rather than making multiple calls. The Commission has found this benefit to consumers to be "substantial."<sup>27</sup>

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<sup>26</sup> *US West Forbearance Order* at ¶ 48-56.

<sup>27</sup> *US West Forbearance Order* at ¶ 51.

The requested forbearance also will not cause competitive harms. As the Commission concluded in the *U S West Forbearance Order*, the requirement that in-region directory listing information be provided to nonaffiliated entities on nondiscriminatory terms should ensure that the market for nonlocal directory services will become increasingly competitive and is sufficient to ensure that competition will not be undermined.<sup>28</sup> Accordingly, forbearance, conditioned by the nondiscrimination requirement, satisfies the public interest test of Section 10.


#### CONCLUSION

BellSouth has shown herein that its request for forbearance meets the three part Section 10 forbearance standard in accordance with the Commission's analysis in the *U S West Forbearance Order*. Accordingly, BellSouth requests the same forbearance authority recently granted U S West.

Respectfully submitted,

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<sup>28</sup> *U S West Forbearance Order* at ¶ 53-54.

**CERTIFICATE OF SERVICE**

I certify that I have this 8<sup>th</sup> day of October, 1999 served all parties to this action with a copy of the foregoing BELLSOUTH PETITION FOR FORBEARANCE by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below:

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